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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LEVI CHIN and TERESA PRECIADO
on behalf of themselves, and all others
similarly situated,

CASE NO 5:24-cv-1473

CLASS ACTION COMPLAINT

Plaintiffs

V.

DEMAND FOR JURY TRIAL

EVERGREEN FREEDOM
FOUNDATION,
Defendant

Plaintiffs, Levi Chin and Teresa Preciado (“Plaintiffs”), individually and on behalf of all others similarly situated, allege on personal knowledge, investigation of counsel, and on information and belief as follows:

NATURE OF ACTION

1. This case involves Evergreen Freedom Foundation (“Evergreen”) who contacted individuals through the use of unsolicited emails with misleading subject lines in violation of the Cal. Bus. & Prof. Code § 17529, *et seq.* (hereinafter referred to as the “California Anti-Spam Law”).

2. The California Anti-Spam Law aims to deter the “annoyance” of unsolicited email-advertisements,” as well as the “cost on users, using up valuable storage space in e-mail inboxes, as well as costly computer bandwidth, and on networks and the computer servers that power them, and discourages people from using e-mail.”

3. Spam emails “also cause[] many additional problems because it is easy and inexpensive to create, but difficult and costly to eliminate.” This includes the “‘cost shifting’ from deceptive spammers to Internet business and e-mail users,” which “has been likened to sending junk mail with postage due or making telemarketing calls to someone’s pay-per-minute cellular phone.”

4. Additionally, “spam is responsible for virus proliferation that can cause tremendous damage both to individual computers and to business systems.”

5. Defendant has violated the California Anti-Spam Law by sending misleading emails to Plaintiffs and Class Members without Plaintiffs' and Class Members' prior express consent in absence of a preexisting relationship.

6. Plaintiffs bring this action for injunctive relief, statutory damages, and attorneys fees and costs, all arising from the illegal activities of Defendant.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this case based on diversity of citizenship under 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000 and the citizenship of the parties at issue are diverse.

1 8. This Court has specific personal jurisdiction over Defendant because
2 Defendant targeted consumers with advertising emails in California and this District,
3 including to Plaintiffs, who reside in this District. Defendant's email marketing
4 directed to residents of California is the subject of this dispute from which this lawsuit
5 arises.

6 9. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(2)
7 because a substantial amount of the conduct and events giving rise to this case, the
8 transmission of unsolicited email advertisements directed to and received by
9 residents of California including those sent to Plaintiffs, occurred in this District,
10 Defendant Evergreen has an office located in this District in Orange County, and
11 Plaintiffs reside in this District.

PARTIES

12 10. Plaintiff Levi Chin, is, and at all times mentioned herein was, an
13 individual citizen of the state of California and resident of Moreno Valley, Riverside
14 County, California.

15 11. Plaintiff Teresa Preciado, is, and at all times mentioned herein was, an
16 individual citizen of the state of California and a resident of Riverside, Riverside
17 County, California.

18 12. Defendant Evergreen is a corporation. At the time of the events
19 described in this Complaint, Evergreen was registered in the State of Washington, but
20 effective June 3, 2024, has registered as a domesticated corporation in the State of
21 Texas. Evergreen's registered agent for service of process in Texas is listed as CT
22 Corporation System, 1999 Bryan St., Ste., 900, Dallas, Texas 75201.

FACTUAL ALLEGATIONS

24 13. Plaintiffs are employees of San Bernardino County, California, and are
25 members of the Teamsters Local 1932 union, which represents approximately 14,000
26 public employees in California.

27 14. On April 25, 2024, Plaintiffs each received an email to their work email
28 accounts from "orlando@optouttoday.com." These emails contained a subject line

1 marked as “Your Experience with Teamsters – Your Voice Matters.” The substance
2 of the email, however, reveals that the sender is not affiliated with Teamsters, but
3 instead notates several references to its silent political agenda to encourage union
4 members to “stop paying dues” and advising members that they “have the right to stay
5 in or leave your public sector union.” The email advertises or promotes
6 optouttoday.com’s services, which is stated explicitly in the email as “help to stop
7 paying dues” by filling out the forms on the website in order to opt-out of their public
8 sector union. The emails also serve as an advertisement of Defendant’s services in
9 assisting union members in leaving their respective union. These emails are attached
10 hereto as cumulative Exhibit A.

11 15. Evergreen operates as, directs, and controls the entity titled Opt Out
12 Today, and its employees, including Orlando Ibarra. On the website optouttoday.com,
13 it describes itself as a project of Evergreen, which has gross revenues exceeding
14 \$500,000.00.

15 16. Evergreen on its website, <https://www.freedomfoundation.com/about-freedom-foundation/>, holds itself out as “a battle tank that’s battering the entrenched
16 power of left-wing government union bosses who represent a permanent lobby for
17 bigger government, higher taxes, and radical social agendas.”

18 17. The optouttoday.com website states that information it receives from
19 email recipients who visit “is recorded and stored for the purpose of responding to or
20 processing your contact request or union membership cancellation form.”

21 18. The emails received by Plaintiffs were unsolicited.

22 19. The email itself is a template which, upon information and belief, was
23 used to send thousands of emails to Plaintiffs and their co-workers. The fact that this
24 email is a template is confirmed by the fact that the email greeting is not personalized,
25 and instead states “Dear [blank],”.

26 20. Upon information and belief, Defendant paid for, authorized, and
27 directed the unsolicited and misleading emails to Plaintiffs and members of the
28

1 proposed class for the purpose of pushing its political agenda in abolishing unions
 2 nationwide.

3 21. Plaintiffs further allege on information and belief that in each instance
 4 of transmission, Defendant had actual notice of participation, or a high degree of
 5 involvement, in a plan to create and transmit the emails to Plaintiffs and the putative
 6 Class Members.

7 22. Other individuals and/or entities whose names are not known to
 8 Plaintiffs but will be revealed in discovery are likely also funding and directing the
 9 illegal email campaign described above.

10 23. In receiving the unsolicited and misleading emails, Plaintiffs suffered
 11 concrete harm in the form of lost time spent reading the emails and responding in an
 12 attempt to discern the context given the headline's objectively misleading nature, and
 13 an invasion of privacy. Plaintiffs also found the Defendant's emails harassing,
 14 annoying, and deceptive.

15 24. Plaintiffs have neither a preexisting or current business relationship with
 16 Defendant nor provided direct consent to receive the emails or advertisements from
 17 Defendant.

18 CLASS ACTION ALLEGATIONS

19 25. Plaintiffs incorporate paragraphs 1-24 as if fully alleged herein.

20 26. Plaintiffs bring this action on behalf of themselves, and behalf of all
 21 other persons similarly situated (hereinafter referred to as "the Class").

22 27. ***Class Definition:*** Plaintiffs propose the following Class definition,
 23 subject to amendment as appropriate:

24 **All individuals in California who received one or more**
 25 **email(s) from Defendant Evergreen Freedom**
 26 **Foundation, by and through Opt Out Today, on or**
 27 **around April 25, 2024, containing the subject line**
 28 **"Your Experience with Teamsters – Your Voice**
Matters."

1 Plaintiffs represent, and are members of, the Class. Excluded from the Class are
 2 Defendant and any entities in which a Defendant has a controlling interest, Defendant'
 3 agents and employees, any Judge to whom this action is assigned and any member of
 4 such Judge's staff and immediate family, Plaintiffs' counsel, and any claims for
 5 personal injury, wrongful death and/or emotional distress.

6 28. This Class Action Complaint seeks injunctive relief and money
 7 damages.

8 29. ***Numerosity under FRCP 23(a)(1):*** Plaintiffs do not know the exact
 9 number of members in the Class, but on information and belief, the number of Class
 10 members exceeds 40. The joinder of all Class members is impracticable due to the
 11 size and relatively modest value of each individual claim. The disposition of claims
 12 in a class action will provide substantial benefit to the parties and the judicial economy
 13 of the Court in avoiding a multiplicity of identical suits. The Class can be identified
 14 easily through records maintained by Defendant and/or any vendors who transmitted
 15 the unsolicited email on their behalf.

16 30. ***Commonality under FRCP 23(a)(2):*** There are well defined, nearly
 17 identical, questions of law and fact affecting all Class members. Those common
 18 questions of law and fact include, but are not limited to, the following:

19 a. Whether the emails sent to Plaintiffs and the
 20 Class contain a misrepresentation in the subject line;

21 b. Whether the emails sent to Plaintiffs and the
 22 Class would be likely to mislead the recipients;

23 c. Whether the emails were made by or sent at
 24 the direction of one or more of the Defendant;

25 d. Whether Defendant can meet their burden of
 26 showing they obtained prior express consent (*i.e.*, consent
 27 that is clearly and unmistakably stated) to send such emails
 28 (if applicable);

29 e. Whether Defendant are liable for damages,

1 and the amount of such damages; and

2 f. Whether Defendant should be enjoined from
3 engaging in such conduct in the future.

4 31. ***Typicality under FRCP 23(a)(3):*** As persons who received the emails,
5 without their prior express consent within the meaning of the California Anti-Spam
6 Law, Plaintiffs assert claims that are typical of each Class member. Plaintiffs will
7 fairly and adequately represent and protect the interests of the Class, and have no
8 interests which are antagonistic to any member of the Class.

9 32. ***Adequacy under FRCP 23(a)(4):*** Plaintiffs are members of the putative
10 class, and shall exercise due care and diligence in pursuing these claims on behalf of
11 the putative class. Plaintiffs have also retained counsel experienced in handling class
12 action claims involving violations of federal and state consumer protection and
13 privacy statutes.

14 33. ***Predominance and Superiority under FRCP 23(b)(3):*** The common
15 questions of law and fact involving the Class claims predominate over questions
16 which may affect individual Class members. A class action is the superior method for
17 the fair and efficient adjudication of this controversy. Class-wide relief is essential to
18 compel Defendant to comply with the California Anti-Spam Law. The interest of
19 Class members in individually controlling the prosecution of separate claims against
20 Defendant is small because the statutory damages in an individual action for the
21 violation of the California Anti-Spam Law are small. Management of these claims is
22 likely to present significantly fewer difficulties than are presented in many class
23 claims because the emails at issue all used the same template, and the Class members
24 did not provide prior express consent required under the statute to authorize receipt of
such emails.

25 34. ***Injunctive Relief under FRCP 23(b)(2):*** Defendant has acted on
26 grounds applicable to the Class, thereby making final injunctive relief and
27 corresponding declaratory relief with respect to the Class as a whole appropriate.
28 Moreover, on information and belief, Plaintiffs alleges that the California Anti-Spam

Law violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

35. ***Class Notice:*** Plaintiffs anticipate that notice to the proposed Class will be effectuated through recognized, Court-approved notice dissemination methods, which may include: United States mail, electronic mail, Internet postings, and/or published notice.

CAUSE OF ACTION

FIRST COUNT: VIOLATION(S) OF THE CALIFORNIA ANTI-SPAM LAW

36. Plaintiffs incorporate paragraphs 1-35 as if fully alleged herein.

37. The California legislature enacted the California Anti-Spam Law due to the “increasing drain on corporate budgets and possibly a threat to the continued usefulness of the most successful tool of the computer age.” Cal. Bus. & Prof. Code § 17529(b).

38. The overarching purpose of the California Anti-Spam Law is to prohibit spam and regulate emails. *Id.* at § 17529(m).

39. The California Anti-Spam Law regulates, among other things, the transmission and content of electronic mail messages initiated for the purpose of advertising and promoting, among other things, services. *Id.* at §§ 17529.1 and 17529.5

40. The California Anti-Spam Law imposes liability on an entity where unsolicited email advertisements which violate the California Anti-Spam law are sent on its behalf. *Id.* at § 17529.8.

41. Plaintiffs are, and at all times mentioned herein were, “recipients” as defined by Cal. Bus. & Prof. Code § 17529.1(m).

42. Further, at all times mentioned herein, Plaintiffs have neither 1) a preexisting or current business relationship with Defendant nor 2) provided direct consent to receive advertisements from Defendant within the meaning of Cal. Bus. & Prof. Code § 17529.1(o). Thus, the emails at issue are within the meaning of

1 “Unsolicited Commercial E-mail Advertisement” as defined by the California Anti-
2 Spam Law. Cal. Bus. & Prof. Code § 17529.1(o).

3 43. Defendant is, and at all times mentioned herein were “advertisers” as
4 defined by California Anti-Spam Law. Cal. Bus. & Prof. Code § 17529.1(a).

5 44. The emails at issue were sent to the California based email addresses
6 of the Plaintiffs.

7 45. The emails at issue were “commercial e-mail advertisements” within
8 the meaning of § 17529.1(c), intending to advertise the services of Defendant in
9 providing assistance to union members in terminating their memberships by hosting
10 a website which: (1) collects contact information and other data about the member;
11 and (2) provides the member with opt-out instructions and customized opt-out forms
12 for specific public-sector unions, which the member can either print or have
13 Defendant mail to them.

14 46. The subject line of the emails at issue contained a subject line that was
15 both misrepresentative of the context of the emails’ substance and misleading about
16 a material fact regarding the contents or subject matter of the message under
17 California Anti-Spam Law. Cal. Bus. & Prof. Code § 17529.5(a)(3).

18 47. The emails specifically misrepresented a material fact regarding the
19 contents and/or subject matter of the email under § 17529.5(a)(3) in that the subject
20 line appeared on its face to be endorsed or solicited by the Teamsters, when in fact
21 the email actually is intended to advertise the Defendant’ website services in
22 providing instructions and forms for the union member to opt-out of their
23 membership with the Teamsters.

24 48. Defendant knew the emails would be likely to mislead the Plaintiffs
25 and recipients, acting reasonably under the circumstances, about a material fact
26 regarding the contents or subject matter of the Emails under § 17529.5(a)(3).

27 49. As a result of Defendant’ conduct, Plaintiffs and the Class have
28 suffered actual damages and liquidated damages under the California Anti-Spam
Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that the Court grant Plaintiffs and all putative Class members the following relief against Defendant:

A. Injunctive relief prohibiting such violations of the California Anti-Spam Law by Defendant in the future;

B. Liquidated damages, as provided by statute, of up to \$1,000.00 for each Email sent to the putative class, up to the maximum recovery of \$1,000,000.00 per incident;

D. An award of reasonable attorneys' fees and costs to counsel for Plaintiffs and the Class;

E. An order certifying this action to be a proper class action, establishing an appropriate Class (and any Subclasses the Court deems appropriate), finding that Plaintiffs are proper representatives of the Class, and appointing the lawyers and law firms representing Plaintiffs as counsel for the Class;

F. A trial by jury on all counts so triable; and

Plaintiffs demand a trial by jury on all issues so triable.

DATED: July 15, 2024

Respectfully submitted,

/s/Julie Gutman Dickinson

Julie Gutman Dickinson

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The filer hereby attests that all other signatories listed, and on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.